

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules)	
To Ensure Compatibility with Enhanced)	
911 Emergency Calling Systems)	CC Docket No. 94-102
)	
Petition of City of Richardson, Texas)	

**T-MOBILE USA, INC.
REPLY TO OPPOSITION TO PETITIONS FOR RECONSIDERATION**

T-Mobile USA, Inc. ("T-Mobile," formerly VoiceStream Wireless Corporation) respectfully replies to the *Opposition to Petitions for Reconsideration* filed by the Association of Public-Safety Communications Officials-International, Inc. ("APCO") and the National Emergency Number Association ("NENA") in the City of Richardson proceeding.¹ APCO and NENA characterize the petitions for reconsideration² of the Commission's *Order on Reconsideration*³ as yet another demonstration of unwillingness on the part of the wireless carriers to implement E911 Phase I and Phase II. Nothing could be further from the truth. The rules as variously amended leave carriers and PSAPs alike with an overly complicated and

¹ Association of Public-Safety Communications Officials-International, Inc. and National Emergency Number Association, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Opposition to Petitions for Reconsideration* (filed March 24, 2003) ("*Opposition*").

² See Cingular Wireless LLC, *Petition for Reconsideration*, CC Docket No. 94-102 (filed Feb. 21, 2003); Nextel Communications, Inc., *Petition for Reconsideration*, CC Docket No. 94-102 (filed Feb. 21, 2003); T-Mobile, Inc., *Petition for Clarification and Reconsideration*, CC Docket No. 94-102 (dated Feb. 21, 2003).

³ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order on Reconsideration*, 2002 FCC LEXIS 6299 (rel. Nov. 26, 2002) ("*Richardson II*"). See also Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, 16 FCC Rcd. 18982 (2001) ("*Richardson I*").

cumbersome scheme for negotiating what is already a complicated task. T-Mobile believes that the disjuncture between the rules and the realities of deployment disserves the public interest in seeing E911 service made available as quickly and broadly as possible. As such, the Commission should return to first principles and fundamentally re-write the rules to respond to the substantive and procedural infirmities identified in the petitions.

I. APCO AND NENA FAIL TO RECOGNIZE THAT THE CERTIFICATION AND TOLLING RULES FORCE AN UNNECESSARILY ADVERSE RELATIONSHIP AMONG THE IMPLEMENTING PARTIES

APCO and NENA challenge even the *act* of filing the petitions for reconsideration, asserting that “some carriers appear to have adopted a strategy of challenging every minute detail and requesting clarification to address every conceivable circumstance.”⁴ Unfortunately, the apparent but unlawful atmosphere of strict liability for implementation delays has forced carriers into a defensive posture.⁵ With the technical complexity and the sheer magnitude of

⁴ *Opposition* at 2.

⁵ The Commission lacks the statutory authority to impose strict liability on any carrier as a result of its choice of ALI technology. Case law clearly establishes that agencies cannot impose technologically or economically infeasible requirements without Congress enacting a specific, technology-forcing statute. *Compare Bunker Hill Co. v. EPA*, 572 F.2d 1286, 1293-1301 (1977) (reversing and remanding EPA Clean Air Act regulations because “the EPA cannot require ... technology that is technologically and economically infeasible”) with *Edison Electric Institute, et al. v. EPA*, 996 F.2d 326, 335-336 (D.C. 1993) (upholding EPA Resource Conservation and Recovery Act regulations “even though it may have been impossible” for companies to comply where Congress spoke directly to the precise question at issue in “a highly prescriptive, technology-forcing statute” intended to be “draconian”). Congress has enacted no such statute requiring wireless carriers to meet the E911 Phase II benchmarks set by the Commission regardless of technical or economic feasibility. Instead, the Commission has relied principally on its general regulatory authority under section 303(r) of the Communications Act in its adopting E911 rules. Needless to say, Congress’s basic grant of regulatory power in 1934 did not mandate the adoption of the E911 benchmarks or even its final deadlines. In the *Fourth Memorandum Opinion & Order*, the Commission again cited its authority under section 303(r) and asserted that Congress had ratified the Commission’s E911 decisions by enacting the 1999 Wireless Communications and Public Safety Act. *Fourth Memorandum Opinion & Order*, 15 FCC Rcd at 17445 (¶ 6). The Wireless Communications and Public Safety Act, however, merely directs the FCC to “encourage and support” E911 development. 47 U.S.C. § 615. Moreover Congress included statutory language expressly disclaiming any intent to authorize the Commission to adopt a technology-forcing regulation, stating that “[n]othing in this subsection shall be construed to authorize or require the Commission to impose obligations or costs on any person.” *Id.* Thus, any assertion that the Commission can enforce its E911 Phase II benchmarks regardless of technological or economic infeasibility would not survive judicial review. The public safety organizations have also indicated their view that strict liability is not appropriate. Responding to a filing on the *Cingular GSM*

implementing hundreds of requests under tight deadlines, carriers simply cannot afford to ignore ambiguities and conflicts in the Commission's rules.

Importantly, by failing to expressly declare what it expects of *all* parties to the deployment process, the Commission perpetuates a myth that the wireless carriers can solve any problem arising in the deployment process (and therefore, the thinking goes, should be held strictly liable for any delays other than those attributable to the PSAP's readiness). At present, there is no realistic sense of the obligations of third parties such as the LEC, the ALI database provider, and any of their agents, such as Intrado. Just before *Richardson II* was decided, the Commission's own expert, Dale Hatfield, reported to the Commission that "the incumbent local exchange carriers play a critical role in the deployment of wireless E911" but "their responsibilities for supporting wireless E911 deployment were not well defined."⁶ The Commission must define these responsibilities now. Absent a clear statement of the obligations and expectations of third parties in the E911 deployment process, the Commission cannot promote proper accountability.

All three carriers seeking reconsideration and clarification principally have asked for a more flexible and collaborative process that reflects the realities of Phase II deployment. Even APCO and NENA concede the challenges: "If we have learned anything . . . thus far, it is that unanticipated issues and problems arise."⁷ T-Mobile agrees, and would much prefer that the Commission establish an expedited dispute resolution process, whereby carriers and PSAPs can obtain needed guidance quickly and easily.

Waiver, they read the Commission's orders as indicating that noncompliance would not be automatically excused, but also "clearly [leaving] the door open that noncompliance would not result in any sanction." *Opposition of NENA, APCO and NASNA*, CC Docket No. 94-102, at 7 (filed Dec. 19, 2001).

⁶ Dale N. Hatfield, *A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services*, WT Docket No. 02-46, at iii (filed Oct. 15, 2002).

⁷ *Id.*

At present, carriers are often left with no option, and uncertainties are resolved only through the enforcement process – a scenario that does not facilitate the resolution of questions before they become problems. For example, T-Mobile has sought clarification that tolling applies when a carrier cannot complete implementation within six months due to implementation issues arising from third parties. Without any sense of irony, APCO and NENA suggest that rules on this point are unnecessary, as such issues can be resolved case-by-case in the enforcement process.⁸ Given the relatively common occurrence of delays in LEC provisioning of trunks or upgrading of the ALI database, this would not only be a waste of Commission resources, but also an empty exercise that bears no relation to the purpose of the rules.

In the absence of transparency about the obligations of third parties and a procedure to provide guidance and incorporate flexibility into the Commission’s rules to reflect real world implementation issues, T-Mobile cannot ignore the fact that application of the rules, as written, can lead to irrational outcomes that benefit no one.

II. APCO AND NENA IGNORE CONFLICTS IN THE RULES THAT LEAD TO IRRATIONAL RESULTS

APCO and NENA object to T-Mobile’s request that the Commission clarify that certification does not require the carrier to complete implementation steps that would necessarily have to be re-done once the PSAP resolves the obstacles that required certification and finally is ready to receive and utilize the E911 data. The *Opposition* asserts that deferring steps that the carrier will have to repeat until after the PSAP is ready “adds unnecessary complications.”⁹ For whom? The PSAP is not harmed – the charade of performing work that must be repeated provides it with no benefit.

⁸ *Opposition* at 7.

⁹ *Opposition* at 4.

The *Opposition* is wholly unresponsive to the underlying concern. It is irrational to force carriers to perform work that will certainly have to be re-done, as it serves no purpose. Indeed, it would force carriers to squander resources better spent accelerating the completion of other deployments. Furthermore, it is unnecessary – with the post-certification 90-day completion period, carriers already have strong incentive to complete all steps that are both *possible and rational* to complete. For example, a carrier would not delay ordering trunks, even though it may pay for them for many months before the PSAP is ready, because trunk deliveries frequently take more than 90 days.

APCO and NENA ignore another legitimate concern. Considering the request for clarification that certification applies in all instances in which a request cannot be fulfilled within six months due to the PSAP's inability to receive and utilize the data, they see nothing more than an attempt by T-Mobile "to win an extra 90 days to do its job."¹⁰ This is not the case, and the *Opposition* skirts the underlying issue.

When a PSAP becomes ready on day 175, must the carrier deliver the Phase II data on day 180? It is irrational and unreasonable to expect that a carrier can complete remaining work that must be performed close to the initiation of service – such as timely loading of cell sites into the gateway mobile location center – as well as testing with the PSAP and remediation of any problems, in a mere five days. Furthermore, the Commission has already spoken to this issue. Under the rules, once a certification has been lifted because the PSAP has become able to receive and utilize the data, the carrier "shall have 90 days" from the PSAP's notification to begin delivering service.¹¹ Hence, if the PSAP becomes ready on day 181, the carrier may have the time necessary, up to day 271, to complete implementation steps that are dependant on the

¹⁰ *Id.* at 3.

PSAP's readiness. There is no rational basis to conclude that when a PSAP becomes ready on day 179, a carrier can complete all remaining work in 1 day, but when that PSAP becomes ready on day 181, the carrier is reasonably entitled to a period up to 90 days to complete its implementation and testing.

III. APCO AND NENA SUPPORT T-MOBILE'S REQUEST FOR TWO IMPORTANT CLARIFICATIONS

APCO and NENA expressly endorse T-Mobile's requested clarification that a carrier seeking certification is permitted to serve the requesting entity, which may or may not be the PSAP.¹² Because some jurisdictions handle requests on a state or countywide basis, it is appropriate that the entity selected to represent the PSAPs in dealing with the carrier be the one notified of the proposed certification. With APCO and NENA's endorsement, PSAPs and carriers agree that this is the most logical and efficient approach.

APCO and NENA also agree that the documentation and tolling rules should apply to previously pending requests, not only those made after the rules' effective date. This result serves the purpose of the rule, which is to ensure that carriers be able to prioritize deployments according to the timetable by which PSAPs will become ready.

One matter bears clarification regarding documentation, however. The *Opposition* suggests that there should be "a specific guideline, *i.e.*, the ESIF 'checklist,' as to what constitutes sufficient documentation to support a valid PSAP Phase II request."¹³ The ESIF checklist, while a valuable document, does not constitute proof of a valid request. Rather, the checklist is a one-page worksheet that helps PSAPs to determine what work or equipment it needs to have in place and to track when those items were ordered and delivered.

¹¹ See 47 C.F.R. § 20.18(j)(4)(x).

¹² *Opposition* at 4.

The Commission's rules already address what documentation must be supplied before a PSAP will be "deemed capable of receiving and utilizing the data elements associated with the service requests."¹⁴ First, evidence that it has "ordered the necessary equipment and has commitments from suppliers to have it installed and operational within such six month period."¹⁵ Second, evidence that it has "made a timely request to the appropriate local exchange carrier for the necessary trunking, upgrades, and other facilities."¹⁶ In addition, the PSAP must document that a cost recovery mechanism is in place. The completed checklist does not supply this underlying documentation, which carriers are entitled to, under the rules, in order to prioritize deployments to serve those PSAPs that will, in fact, be ready at the six month date.

¹³ *Id.* at 6.

¹⁴ Section 20.18(j)(2).

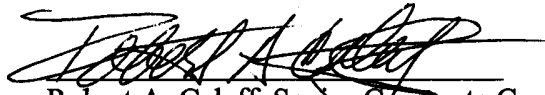
¹⁵ 47 C.F.R. § 20.18(j)(2)(i)(A).

¹⁶ 47 C.F.R. § 20.18(j)(2)(i)(B).

IV. CONCLUSION

For the foregoing reasons, the Commission should grant the Petition for Clarification and Reconsideration.

Respectfully submitted,



Robert A. Calaff, Senior Corporate Counsel
Governmental and Industry Affairs

Jim Nixon
Robert A. Calaff
T-MOBILE USA, INC.
401 9th Street, N.W.
Suite 550
Washington, DC 20004
(202) 654-5900

/s/

John T. Nakahata
Karen L. Gulick
HARRIS, WILTSHIRE & GRANNIS, LLP
1200 18th Street, N.W.
Suite 1200
Washington, DC 20036
(202) 730-1300

Counsel to T-Mobile USA, Inc.

April 3, 2003

CERTIFICATE OF SERVICE

I, Karen R. Stephens, hereby certify that a copy of the foregoing T-Mobile USA, Inc.'s Reply to Opposition to Petitions for Reconsideration was served this 3rd day of April 2003, via first-class mail, postage prepaid, upon the following parties:

Robert Foosaner, Esq.
Nextel Communications, Inc.
2001 Edmund Halley Drive
Mail Stop 2W241
Reston, VA 20191

J.R. Carbonell
Cingular Wireless, LLC
5565 Glenridge Connector
Suite 1700
Atlanta, GA 30342

John K. Ramsey
Executive Director
APCO International
351 North Williamson Boulevard
Daytona Beach, FL 32114

Terry Peters, CAE
Executive Director
National Emergency Number Association
422 Beecher Road
Columbus, OH 43230

Robert M. Gurss
Counsel to APCO
Shook, Hardy & Bacon, LLP
600 14th Street, S.W.
Suite 800
Washington, DC 20005

James R. Hobson
Counsel to NENA
Miller & Van Eaton, PLLC
1155 Connecticut Avenue, N.W.
Suite 1000
Washington, DC 20036

John Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Room 7-C485
Washington, DC 20554

Blaise Scinto, Acting Division Chief
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Vincent R. Stiles
Acting President, APCO International
Suffolk County Police Communications
Bureau
30 Yaphank Avenue
Yaphank, NY 11980

Peter G. Smith
Nichols, Jackson, Dillard, Hager
& Smith, LLP
1800 Lincoln Plaza
500 North Akard
Dallas, TX 75201

Sylvia Lesse
Kraskin, Lesse & Cosson, LLP
2120 L Street, NW
Suite 520
Washington, D.C. 20037

John A. Prendergast
Blooston, Mordkofsky, Dickens, Duffy &
Prendergast
2120 L Street, N.W.
Suite 300
Washington, D.C. 20037

Sharon J. Devine
1020 19th Street, N.W.
Suite 700
Washington, D.C. 20036

John T. Scott, III
Vice President and Deputy General Counsel,
Regulatory Law
Counsel to Verizon Wireless
1300 I Street, N.W.
Suite 400W
Washington, D.C. 20005

Lawrence W. Katz
Counsel to Verizon Telephone Companies
1515 North Courthouse Road
Suite 500
Arlington, VA 22201

Luisa L. Lancetti
Vice President
Sprint PCS
401 9th Street, N.W.
Suite 400
Washington, D.C. 20004

Ronald L. Ripley
Vice President and Senior Corporate
Counsel to Dobson Communications
Corporation
14201 Wireless Way
Oklahoma City, OK 73134

Michael F. Altschul
Senior Vice President and General Counsel
Cellular Telecommunications & Internet
Association
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036

John R. Melcher, President
NENA
Greater Harris County 9-1-1 Emergency
Network
602 Sawyer, Suite 710
Houston, TX 77007

Dan Grosh
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Jim Goerke
Executive Director
National Emergency Number Association
P.O. Box 360960
Columbus, OH 43236

Evelyn Bailey, President
NASNA
Vermont Enhanced 911 Board
94 State Street
Drawer 20
Montpelier, VT 05620

Brian Fontes
Vice President Federal Relations
Cingular Wireless
1818 N Street, N.W.
Suite 800
Washington, DC 20036

Douglas I. Brandon
Vice President, External Affairs & Law
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Fourth Floor
Washington, DC 20036

/s/

Karen R. Stephens